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Kansas Corporation Commission
January 29, 1997
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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review For Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket 91-213
)	
Usage of the Public Switched Network By Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

**INITIAL COMMENTS OF THE
KANSAS CORPORATION COMMISSION**

Kansas Corporation Commission's Interest

The Kansas Corporation Commission (KCC) is the state governmental agency in Kansas charged with the responsibility to ensure just and reasonable rates. Recently enacted state legislation specifies that intrastate access rates be reduced to interstate levels subject to KCC approval. The KCC issued an order in December, 1996 reducing intrastate access for Southwestern Bell Telephone and United.

The FCC's access reform docket may have a direct effect on future intrastate Kansas

access rates. Further, the access proposal contains provisions which could dramatically impact the agency, specifically the proposal to refer residual cost determinations to state commissions.

III. Rate Structure Modifications

The FCC seeks comment on its proposal to increase the Subscriber Line Charge (SLC) for additional lines for residential customers and for all lines for multi-line business customers to the per line loop costs assigned to the interstate jurisdiction (§65).

Discussion

Most homes today have two lines in the drop. The cable behind the house has idle facilities. The additional investment for provisioning a second loop in most cases is close to zero. Yet these customers pay \$3.50 SLC toward the CCL recovery. If enough customers paid this second SLC charge, there should be a substantial reduction in the usage sensitive CCL revenue requirement. If customers are required to pay more than \$3.50 for additional lines, this would suppress the number of subscribers to more than one line, negatively impacting the usefulness of the existing network. Many computer users might disconnect from the network, thus interrupting an important social trend toward data connectivity.

We believe that before implementation, this proposal needs to be studied and the assumptions supported by data. The current assumption seems to hold that costs increase when an additional residence line is connected. In contrast, if we are correct, then SLCs on additional residential lines should remain at the same rate and be used to reduce the usage sensitive CCL revenue requirement.

IV. Approaches to Access Rate Reform and Deregulation

The FCC seeks comment on whether it should select a market-based approach to access reform, a prescriptive approach, adopt both approaches, or merge the two approaches in some fashion (§144).

Discussion

The KCC recommends the FCC follow the market based approach in reforming access charges. This approach has a number of advantages. It minimizes the need for rate cases or similar procedures to ascertain the level of above market embedded costs if the FCC determines to allow their partial or complete recovery through rates. The market approach follows the intent of recent regulatory reforms in the interstate jurisdiction and the Kansas intrastate jurisdiction, the direction of the industry and the FCC price cap regime. It is also the best way to stimulate efficient investment in the access network.

However, at the same time, the Commission should recognize that competition and competitive entry will not advance at the same pace in all markets. It is incumbent upon the Commission to ensure that market power in less than competitive markets is not abused. Thus the KCC urges the FCC to continue monitoring markets and LEC behavior. In some markets in some areas, stronger restrictions on LEC behavior may be needed to ensure that the greater operational and pricing flexibility proposed in the NPRM does not lead to arbitrarily discriminatory pricing and hurt the development of competitive market in the telecommunications industry.

V. Market Based Approach to Access Reform

The FCC seeks comment on whether carriers satisfying Phase 2 requirements should be permitted to apportion access charges between carrier and end-user according to market place pressures.

The FCC also seeks comment on whether it should permit LECs to collect charges from end-users for originating access, terminating access or both and whether such charges should be imposed on the party placing or receiving a call.

Further, the FCC seeks suggestions on any steps it should take to ensure that an IXC can recover access charges from its customers in an efficient manner.

Discussion

The KCC urges the Commission to prevent carriers from charging end-users for access. The primary issue is the nature of access. Access is a service that carriers purchase to reach end-users/customers. If, on the other hand, the carrier bills the end-user directly, then end-users/customers are paying to reach the carrier. Efficiency and equity demand that the end-user be able to make informed decisions out of several readily available options. The end-user must be aware of the total price he pays for a service. Otherwise, there could be an imposition of costs on an end-user without consent and in a possibly arbitrary manner. For example, charges might not be disclosed to end-users before a service is ordered and only be revealed afterwards. It is unclear, in the KCC's view, that the Phase 2 market environment prevents an inappropriate collection of access from the IXC and the customer.

The KCC strongly believes it would grave error for the Commission to allow terminating

access charges be imposed on end-users. It directly contradicts the concept of consumer sovereignty by taking the choice of consumers out of their hands and into that of the originating caller and access provider. It would be truly unfortunate if in addition to being bothered by a sales call, that consumer would be required to pay for the annoyance.

VI. Prescriptive Approach to Access Reform

The FCC seeks comment on what, if any, federal guidelines should be established for the conduct of state studies designed to determine the difference between current interstate access rates and forward-looking economic cost based access rates. The FCC also seeks suggested alternative proposals for reinitializing PCIs at forward-looking, economic cost, in the event the FCC determines that a market-based approach will not result in economically efficient rates.

The FCC also seeks comment on whether and to what extent incumbent LECs should be permitted an opportunity to recover any difference between TSLRIC-based rates and current rates (§ 227).

Discussion

The KCC believes that it is inappropriate to require states to review cost studies (or some other method) which aids in setting interstate rates. This may be a large burden on states--in effect, it seems to require an examination of the cost study method by each state commission. In addition, each state is but one of several in a BOC's territory. If the FCC relies on several commissions' findings, it could produce contradictory results; on the other hand, if just one state

conducts a review, then that commission might decide rates for all states in the service territory. State familiarity with BOC/LEC costs are primarily of the intrastate variety, and state expertise in that type may not transfer to interstate cost studies. States may have insufficient resources to devote to the examination of cost studies in addition to all other tasks placed on the states, including the possibility of effects stemming from the appeal of the Interconnection Order.

Under the prescriptive approach, equity considerations may make it difficult to deny incumbent LECs the opportunity to recover stranded costs. It is less clear that the same conclusion can be reached for the market approach. Hence, the KCC believes that if the market-based approach is chosen, recovery may not be an issue in the regulatory treatment of LEC rates (i.e., recovery of these costs should not be a consideration in the price cap plans). The shortfall between incremental cost-based rates and embedded cost-based rates may ultimately be recovered from customers. In the event that the Commission determines that the public interest requires recovery of these costs, the KCC urges the Commission to establish stringent controls on its recovery.

Section VII Transition Issues

The FCC seeks comment on state commission investigation of residual cost recovery (§258) . Further, the FCC seeks comment regarding the recovery mechanism which should be employed assuming residual costs are recovered (§261-265).

Discussion

The history of telecom regulation in Kansas differs widely from that employed by the

FCC. The KCC could envision justification for differing regulatory treatment of these costs between the intrastate and interstate jurisdictions due to this difference in the form of regulation between jurisdictions. The KCC doesn't believe that state commissions are the appropriate regulatory body to make this determination regarding costs incurred in the interstate jurisdiction. The KCC favors a market based approach to recovery of any residual costs, to the extent they exist. However, if the FCC decides to go with a more prescriptive approach, the KCC recommends that the FCC make this determination regarding interstate residual costs at the federal level. If the KCC is required to address interstate residual cost recovery, it suggests that clear and direct guidance be provided by the FCC to state commissions.

The KCC declines to address whether incumbent LECs are entitled to recover some or all of any difference between interstate-allocated embedded costs and forward looking economic costs. However the KCC will address the suggestion that such a proceeding may be held at the state level. Southwestern Bell Telephone (SBC), the RBOC providing service in Kansas has been operating under an incentive rate making plan in Kansas since February, 1990, with no earnings sharing mechanism in place. In effect there has been no cap on regulated earnings. Thus "rate case type proceedings" have not been held in Kansas and would impose a significant drain on agency resources to conduct such a review. The KCC believes that the history of regulation in a given state must be fully understood before an informed decision on "residual cost" recovery can be made. The KCC believes that the FCC is the best forum to determine and quantify appropriate residual interstate costs.

If the FCC mandates a role for state commissioners they may find themselves in the

unique position of holding technical hearings on the magnitude of interstate residual costs.

Undoubtedly, different state commissions would reach different conclusions on the appropriate policy and cost identification of interstate costs. In summary, this "patchwork" approach to interstate regulation would result in interstate results based upon the differences in methodology applied in each state. The lack of interstate uniformity inherent in such an approach is not in the public interest.

VIII. Other Issues - Access Rates Charged by Non-Incumbent LECs

The FCC seeks comment on whether the FCC should establish rules on the provision of access service by Competitive LECs (CLEC), most particularly terminating access service (§ 277-280).

Discussion

Non-incumbent LECs will have the same monopoly position for access service that incumbent LECs currently have. Without regulation, this situation is ripe for abuse. The following scenario describes the problem:

Several IXCs have made their long distance services available within the exchange. The CLEC has made equal access available to its customer. The end user chooses the ABC company for long distance. The CLEC charges \$.25 per minute for originating and terminating access usage. Our understanding is that the ABC company is required to have averaged long distance rates and

cannot pass on the cost of the high access charges to the end user who is generating the long distance usage. The same opportunity for monopolistic pricing exists for terminating access charges that could apply to all IXC's who happen to have traffic terminating to the CLEC's customers. The ABC company and all the IXC's with terminating traffic are a captive market to the CLEC. This is more than a theoretical discussion, Kansas currently has a situation where a CLEC is charging intrastate access rates which are almost twice the rate of the incumbent.

With the current rules for averaged long distance rates, it seems necessary to implement rules for both originating and terminating access rates. We agree that part one of a rule could be that the CLEC's access rate is presumptively just and reasonable if the charge is less than or equal to the access charge of the incumbent LEC. For part two of the rule regarding recovery of higher costs, we think there are advantages to allowing the CLEC to recover any additional costs from its end user. This will place the end user in a position to compare total prices between the competing local exchange companies. It also removes the IXC's from being victims of monopolistic pricing. The option to charge the end user is superior to requiring a cost justification because it lets the market place determine if the customer is willing to pay.

Respectfully Submitted,

Eva Powers

Eva Powers
Assistant General Counsel
Kansas Corporation Commission

CERTIFICATE OF SERVICE

I hereby certify that the original and sixteen (16) copies of the foregoing were mailed by Federal Express, postage prepaid, on this 28th day of January, 1997

Eva Powers

Eva Powers

VERIFICATION

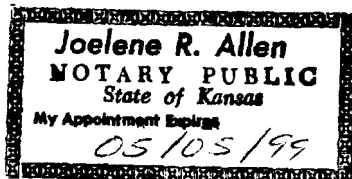
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Eva Powers, of lawful age, being first duly sworn upon oath states that she is an attorney for Kansas Corporation Commission, that she has read the above Initial Comments of the Kansas Corporation Commission and believes it to be true and correct to the best of her information, knowledge and belief.

Eva Powers

Eva Powers

Subscribed and sworn before me this 28th day of January, 1997.



Joelene R. Allen
Notary Public

My Commission Expires:

May 5, 1999